

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ASHLEY and JASON SOUZA,

Plaintiff(s),

v.

SHELLPOINT MORTGAGE SERVICING,
et al.,

Defendant(s).

Case No.: 2:20-cv-00992-APG-NJK

ORDER

[Docket No. 33]

Pending before the Court is a motion requesting leave to file an amended answer, filed by Defendant Shellpoint Mortgage Servicing (“Defendant”). Docket No. 33. Plaintiffs have not filed a response, and the time to do so has now passed. *See* Docket. The motion is properly resolved without a hearing. *See* Local Rule 78-1.

I. BACKGROUND

The Court previously issued an order granting in part and denying in part Plaintiffs’ motion to strike several affirmative defenses in Defendant’s answer. *See* Docket No. 29. The Court advised the parties that any motion for leave to amend had to be filed no later than October 13, 2020. *See id.* at 6. On October 13, 2020, Defendant filed the instant motion, seeking leave to amend its answer with respect to its third, fifth, sixth, ninth, tenth, and twelfth affirmative defenses. *See* Docket No. 33 at 1–4. Plaintiff did not file a response. *See* Docket.

II. ANALYSIS

Generally, a party may amend its pleading once as a matter of course within twenty-one days after serving it or twenty-one days after service of a responsive pleading or motion. Fed.R.Civ.P. 15(a)(1). In all other cases, a party may amend its pleading only by leave of court or with written consent of the adverse party. Fed.R.Civ.P. 15(a)(2). “The Court should freely give leave when justice so requires.” *Id.*; *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (“Rule

1 15(a) declares that leave to amend ‘shall be freely given when justice so requires’; this mandate is
 2 to be heeded”). In making this determination, the Ninth Circuit has opined that “a court must be
 3 guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on
 4 pleadings or technicalities.” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Thus, Rule
 5 15(a) is to be applied with “extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d
 6 1048, 1051 (9th Cir. 2003) (*per curiam*).

7 In deciding whether to grant leave to amend, courts consider five factors: (1) bad faith; (2)
 8 undue delay; (3) prejudice to the opposing party; (4) futility of the amendment; and (5) whether
 9 the party has previously amended the pleading. *See id.* at 1052. These factors do not carry equal
 10 weight, however, and prejudice is the touchstone of the analysis. *See id.* The party opposing
 11 amendment bears the burden of showing why leave to amend should be denied. *See, e.g., Desert*
 12 *Protective Council v. U.S. Dep’t of the Interior*, 927 F. Supp. 2d 949, 962 (S.D. Cal. 2013) (citing
 13 *Genentech, Inc. v. Abbott Labs.*, 127 F.R.D. 529, 530–31 (N.D. Cal. 1989)).

14 Plaintiffs’ failure to respond to Defendant’s motion constitutes a consent to the granting of
 15 the motion. Local Rule 7-2(d). Further, in examining the merits of the motion, the Court finds
 16 that leave to amend is proper.

17 **III. CONCLUSION**

18 Accordingly, the Court **GRANTS** Defendant’s motion requesting leave to file an amended
 19 answer. Docket No. 33. Defendant shall file and serve the amended answer no later than
 20 November 6, 2020.

21 IT IS SO ORDERED.

22 Dated: October 30, 2020

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 24 Nancy J. Koppe
 25 United States Magistrate Judge
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